EX PARTE OR LATE FILED

From: Maureen Katherine Flood <mflood@urc.state.in.us>
To: K1DOM.K1PO1(BKENNARD)
Date: Fri, Mar 5, 1999 2:20 PM
Subject: Comments to the Chairman

96-98

Maureen Katherine Flood (mflood@urc.state.in.us) writes:

THESE COMMENTS ARE SUBMITTED ON BEHALF OF THE INDIANA UTILITY REGULATORY COMMISSION--A COPY WILL BE FAXED THIS AFTERNOON

March 5, 1999

RECEIVED

MAR 16 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable William Kennard
Office of the Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Request for a Stay of the FCC↕s De-Averaging Rules

Ex Parte Comments: Two originals filed in the following docket: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98)

Dear Chairman Kennard:

It is our understanding that the FCC will soon address the implementation of several rules contained in the August 1996 local competition order due to the recent Supreme Court decision in AT&T Corp. v. Iowa Utilities Board. The Indiana Utility Regulatory Commission (IURC) is concerned that the implementation of the FCC↕s rule requiring geographic de-averaging of rates for interconnection and unbundled network elements (UNEs) could have a significant, negative impact on competition in the market for local exchange telecommunications services in the State of Indiana.

The IURC did not establish three geographic zones for interconnection and UNE rates in its generic proceedings for Ameritech Indiana (Cause No. 40611) and GTE (Cause No. 40618). Instead, the IURC geographically averaged rates for interconnection and UNEs, effectively creating one rate rather than three rates for each network element. The IURC did not adopt geographic de-averaging because the fill factors and loop drop lengths for GTE only were available on a geographically averaged basis. Furthermore, cost of capital data for both Ameritech and GTE were only available on a geographically averaged basis. Since these are significant factors in determining the costs and the resulting rates for interconnection and UNEs, the lack of such geographically de-averaged inputs made it impossible for the IURC to develop geographically de-averaged rates.

In order for the IURC to implement UNE and interconnection rates that are de-averaged into three geographic zones, the IURC would be required to order GTE to submit a new cost study. This could push the development and implementation of UNE and interconnection rates back by several months, if not years.

We remind the FCC that according to its recent Local Competition Report, as of June 30, 1998, approximately 5,000 lines were lost to local competitors by Ameritech Indiana and GTE, Indiana↕s two non-rural ILECs. All of these lines were provided to end-users on a total resale basis versus a facilities-basis. In fact, as of June 30, 1998, Ameritech and GTE had not lost a single access line to a competitor as an unbundled network element. If the FCC adopts the geographic de-averaging rule, both the IURC and interested parties will be forced to spend a significant amount of time and resources developing new, de-averaged rates for UNEs and interconnection, which might in turn delay the entry of competitive carriers into the market for local exchange telecommunications services in Indiana. If the ultimate goal of TA-96 and the FCC↕s order implementing the Act is to promote consumer choice for

No. of Copies rec'd 2
List A B C D E

local telephone service, then the FCC could best achieve this goal by staying the geogr!
aphic de-averaging rule. This w
ill expedite Indiana‡s final approval of UNE and interconnection rates.

In the IURC‡s September 16, 1998 order in its generic investigation of universal service issues (Cause No. 40785), the Commission established that *reasonably comparable services¶ and *reasonably comparable rates¶ must be available between urban areas and rural, insular and high-cost areas, pursuant to section 254(b)(3) of TA-96. Implementing geographically averaged rates is a simple way to achieve such a result. However, if rates for the underlying network elements used to provide services are geographically de-averaged (i.e., a rural access line would cost more than an urban access line), then it is likely that the rates for the services provided across those access lines would differ. Furthermore, geographic de-averaging of wholesale rates, without resolution of the federal large company high cost fund, may disrupt retail rates and violate the Act‡s universal service provisions. We also remind the FCC that many states, including Indiana, have intrastate high cost funds w!
hich similarly could be affected
by the geographic de-averaging rule. In short, implementation of geographically de-averaged rates for UNEs and interconnection may cause a conflict with the findings in the IURC‡s universal service proceeding, as well as section 254(b)(3) of the Act.

The IURC requests that the FCC stay the geographic de-averaging rule. However, if the FCC decides to uphold this requirement, we support NARUC‡s request that geographic de-averaging be suspended until six months after a final FCC order concerning the large company high cost fund. We also ask the FCC to consider making available a waiver process to permit states to adopt, if appropriate, fewer than three zones for interconnection and UNE rates. Specifically, we encourage the FCC adopt the additional provision to 47 CFR Section 51.507(f) proposed by the Wisconsin Public Service Commission in its Petition for Reconsideration (December 30, 1996):

(3) A state commission may petition for a waiver of this section to implement a state-specific alternative de-averaging rate structure plan to reflect geographic cost differences. The Commission (FCC) may grant the waiver if it finds that the proposed plan is consistent with the purposes of this section and the public interest.

In summary, the IURC requests that the FCC stay the geographic de-averaging rule in order to preserve Indiana‡s ability to enforce the comparability and affordability standards outlined in section 254(b)(3) of TA-96, as well as complete our generic investigations into Ameritech Indiana‡s and GTE‡s rates for interconnection and UNEs and universal service funding. If the FCC does not stay this rule, we ask that the rule be suspended until after a final order is issued regarding the federal large company high cost fund, and that a state waiver process be developed before the rule is implemented.

If you have any questions about this correspondence, please do not hesitate to contact us at 317/232-2702.

Sincerely,

Chairman William D. McCarty
(On behalf of all Commissioners)